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National Grain and Feed Association

February 29, 2000

Mr. Vernon Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, DC 20423-0001

Re: Ex Parte No. 582, Public Views on Major Rail Consolidations

Dear Secretary Williams:

Enclosed is the original and ten paper copies of the "Statement of National Grain and Feed Association" for filing in the referenced proceeding. Also, enclosed is the requested floppy diskette, which contains an electronic copy of the NGFA's filing in MicrosoftWord 97 format.

The NGFA understands that its witness -- NGFA President Kendell W. Keith -- has been allocated 8 minutes for an oral presentation on Friday, March 10. Please let us know if any changes are made to the schedule.

Sincerely,

David C. Barrett, Jr.
Counsel for Public Affairs/
Secretary-Treasurer

Enclosures

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National Grain and Feed Association

BEFORE THE
SURFACE TRANSPORTATION BOARD

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STB Ex Parte No. 582

PUBLIC VIEWS ON MAJOR RAIL CONSOLIDATIONS

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STATEMENT OF NATIONAL GRAIN AND FEED ASSOCIATION

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The National Grain and Feed Association (NGFA®) appreciates this opportunity to present its views on the subject of major railroad consolidations and the present and future structure of the North American railroad industry. NGFA notes at the outset that it has not taken a position on the proposed combination of Canadian National Railway Company and Burlington Northern Santa Fe Railway[1].

The NGFA is the U.S.-based trade association for over 1,000 grain, feed, processing and grain-related companies that operate 5,000 facilities that store, handle, merchandise, mill, process and export more than two-thirds of all U.S. grains and oilseeds[2]. About 70 percent of NGFA member firms are small businesses—country elevators and feed mills. Also affiliated with the NGFA are 36 state and regional grain and feed associations.

[1] STB Finance Docket No. 33842.

[2] This statement was developed through the input of the NGFA Rail Shipper/Receiver Committee, which is comprised of representatives of NGFA Active member firms (the association's primary membership class for firms "engaged in the warehousing, processing, manufacturing, merchandising or distribution of grain or feed, or feed ingredients in the United States").

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Rail Industry's Importance to The U.S. Agriculture and Food Sector

A primary NGFA goal is to work "[t]o enhance the economic efficiency, productivity and competitiveness of all sectors of grain-based agriculture.[3]" This includes the railroad industry, whose role in the transportation of bulk agricultural commodities is essential to the continued financial health and competitiveness of U.S. producers and the entire food sector.

U.S. agriculture shares many transportation challenges with other sectors of the economy, including shippers of industrial products, chemicals, plastics, coal and other bulk commodities. But it is important to stress that in several fundamental respects, the U.S. agriculture and food sector is unique compared to these other rail or otherwise transportation-dependent industries

What makes the U.S. agriculture and food sector so unique in a transportation sense?

First, shippers tend to be decentralized, a necessity for serving the broad geographic expanse of U.S. agricultural production. Grain elevators (the first buyers and receivers of grain) are not factories. Nor are they portable. They are located where grain is produced.

That's an important distinction. While admittedly not an optimal solution, it may be feasible for other industries to relocate when confronting unreliable, insufficient or uneconomic transportation service in a specific area. Indeed, some industries have located in cities like Houston, Texas, in large measure because it historically was an important rail terminal with reliable service. Grain elevators and other agricultural plants in the food sector generally do not have this flexibility.

[3] *NGFA Long Range Plan* (March 1997).

Second, agricultural shippers tend to operate facilities that are smaller in size, operation and shipping volumes versus coal, another rail-dependent bulk commodity. Some agribusiness companies have sizable holdings and operations. But generally, the volume of shipments originating from any one location is much lower than the typical facility in other rail shipping industries. Thus, the economic ability of any particular company in our industry – either large or small – to address specific transportation problems for a single location usually is more limited than in most other industries. This characteristic has particular relevance when considering policies that will be most pragmatic and effective in resolving carrier-shipper disputes.

Third, portions of the U.S. agriculture and food sector have more variable, less predictable transportation needs than other industries. Some industries, driven by ordering systems or industrial plans developed months in advance, can operate a highly scheduled transportation service. While U.S. grain movements to domestic users, such as poultry, livestock and processing operations can operate on a fairly scheduled basis, it is well-known that export grain and oilseed shipments are less consistent, subject to seasonal fluctuations in global supply availability as well as surges based upon global weather patterns, economics and demand. The United States is diversifying its dependence on raw grain exports by expanding exports of meat and other value-added products. But the export of whole grains and oilseeds still accounts for 25 to 30 percent of the demand base for U.S. field crops. U.S. agriculture obviously cannot afford to lose this export demand base. But how do we position ourselves to logistically manage the surges, and thereby deliver the greatest potential value back to the farmer?

How important is predictable, reliable rail service to the U.S. agriculture and food sector? Roughly 40 percent of all commercial grain movements to markets are carried by rail. In some western growing areas, it is not unusual to have 75 percent or more of shipments moving by rail. Railroads link the major production regions of the Midwest with processing, livestock and poultry operations on both east and west coasts, as well as all the ports. In the long-haul movements required to keep grain flowing reliably from production regions to points of consumption, rail is often the <u>only</u> viable economic alternative. Many grain and food-sector shippers are located beyond effective trucking distances from markets and far from navigable inland waterway transportation.

NGFA's Views on Pending and Future Rail Industry Consolidations

First, there is no question that the implementation of some past rail industry consolidations (both in the east and west) resulted in significant service disruptions for many agricultural rail users. Thus, it is fair to state that many agricultural rail users often are apprehensive when they hear about another planned rail merger or combination.

While certainly some rail users can point to net benefits from recent railroad mergers or combinations, the railroad industry's past record of actual performance on pre-merger promises is a mixed bag at best. The STB should require a railroad to demonstrate that it can implement a proposed transaction without causing a deterioration in service to rail customers and that rail customers will be made whole when a railroad fails to actually do so.

The NGFA submits that the following criteria should be considered when evaluating further consolidation in the rail industry:

1. Efforts by railroads to gain further efficiencies or add capacity that promote growth for U.S. agriculture should be supported. The impacts on shortline and regional railroads of such efforts by Class I railroads should be carefully analyzed because significant quantities of grain and food products originate and/or terminate on the nation's shortline and regional railroads.

2. Where Class I rail consolidations are approved, conditions should be imposed that at least preserve competition. These conditions should include:

a) guarantees designed to keep all existing rail gateways open – *both physically and economically*;

b) reciprocal switching guaranteed at competitive rate levels. This can sometimes be accomplished through bilateral switching agreements between carriers; and

c) any reductions in route or service options because of the merger must be remedied prior to approval of the merger. For example, if the merger results in the creation of a new "bottleneck," then the merged railroad must be required to quote rail users a separately challengeable rate to a competing carrier under all circumstances.

3. Railroads should provide market-based compensation to rail users damaged by service disruptions related to implementation of a rail merger or combination. Pre-merger promises or guarantees should be in writing and contain objective and enforceable standards. For agricultural rail users, the NGFA suggests the use of the NGFA Arbitration System[4] for fair, prompt and cost-efficient resolution of any merger-related disputes the parties cannot mutually resolve. This suggestion is not meant to replace the need for STB-imposed consolidation conditions.

4. The STB should require more pre-merger financial scrutiny regarding the impact of a proposed merger or combination on the financial health of the resulting entity or entities. Greater emphasis should be placed on determining whether the applicants' claims, if any, of traffic growth are realistic.

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[4] The NGFA administers what is believed to be North America's oldest industry-based arbitration system. The NGFA and all of North America's Class I railroads (and several regional and shortline railroads) reached an historic agreement in 1998 to use the NGFA Arbitration System for resolving specified railroad-rail user disputes. The NGFA Rail Arbitration Rules were expanded to additional issues in July 1999 and extended to October 1, 2001. The agreement constitutes an enforceable pre-dispute arbitration agreement for the signatory railroads and NGFA-member rail users executing their consent to the agreement. Parties also can mutually agree to arbitrate additional issues not specified in the NGFA Rail Arbitration Rules. Thus, the rules already could accommodate a condition requiring a consolidating carrier to arbitrate disputes with NGFA-member rail users.

5. Where transnational mergers or combinations are proposed, the STB should completely analyze and determine the effect of a foreign government's jurisdiction on rail operations[5] of the resulting entity or entities. Distribution of rail equipment or service and the influence of governing authorities on equipment or service allocation are significant issues.

6. Rail customers should not pay for merger premiums paid by acquiring railroads or other entities, nor should such premiums be included in the Board's calculations of revenue adequacy. Excessive consolidation-related investments should be the responsibility of railroad management, not their customers.

7. The approval of further rail mergers or combinations should include an analysis of whether changes in national transportation policy are necessary to ensure or enhance intermodal competition. For example, this might include recommended reform of the nation's outdated maritime cabotage laws, commonly referred to as the Jones Act, which effectively eliminate the use of deepwater, self-propelled vessels for transportation of grain and other agricultural products between U.S. ports. This is particularly apparent where transnational consolidations occur. A Canadian rail shipper located at or near a Canadian Great Lakes port would have the option of shipping by rail or using any available ocean vessel to ship through the Great Lakes to any U.S. port. A U.S. shipper located at or near a U.S. Great Lakes port would be precluded by the Jones Act from using any foreign vessels for a shipment to another U.S. port. Since self-propelled[6] Jones Act ocean-going vessels no longer serve U.S. Great Lakes ports, the U.S. shipper is in a vastly different situation regarding competitive transportation alternatives than the Canadian shipper served by the same railroad.

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[5] For example, will the foreign government influence the allocation of rail cars? How will conflicts of law be resolved if a loss and damage claim arises on a cross-border movement?

[6] Defenders of the Jones Act have sometimes argued that ocean-going barges could serve points in the Great Lakes. While this is theoretically possible, ocean-going barges can not haul the same capacity as the typical self-propelled ocean-going vessel calling on a Great Lakes port. Thus, ocean-going barges do not offer the same economically competitive alternative.

Likewise, the NGFA has in the past proposed[7] amendments to the national rail transportation policy [49 U.S.C. § 10101] that would strike a better balance between the needs of railroads and rail users. Increased consolidation of the rail industry provides an ever-more compelling reason to adopt such changes.

Finally, do additional rail consolidations provide a policy reason for increasing weight limits on commercial trucks as a means of fostering intermodal competition? A pending bill, the *Safe and Efficient Transportation Act*, H.R. 1667, would permit states to increase truck weights up to 97,000 pounds for a vehicle combination of 6 or more axles.

In closing, the NGFA emphasizes that this statement is not intended to voice opposition or support for any particular pending or future rail merger or consolidation. Rather, it represents NGFA's response to the broad questions raised by the STB in its decision instituting this proceeding.

Dated: February 29, 2000

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[7] Testimony of the National Grain and Feed Association before the Subcommittee on Surface Transportation and Merchant Marine of the Committee on Commerce, Science and Transportation, United States Senate (March 2, 1999).